



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,321	02/07/2006	Ralf Grobleben	2003P01225WOUS	6737
46726 7590 11/16/2009 BSH HOME APPLIANCES CORPORATION INTELLECTUAL PROPERTY DEPARTMENT 100 BOSCH BOULEVARD NEW BERN, NC 28562				
EXAMINER WILKENS, JANET MARIE				
ART UNIT		PAPER NUMBER		
3637				
NOTIFICATION DATE		DELIVERY MODE		
11/16/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/567,321
Filing Date: February 07, 2006
Appellant(s): GROBLEBEN ET AL.

James E. Howard
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 16, 2009 appealing from the Office action mailed December 11, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2103885	WHALEN	12-1937
5036990	VERCHERE	8-1991
2018002	AVERY	10-1935
2450337	HEARST	9-1948
5348207	FRANK	9-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 30-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For claim 30, it is unclear whether or not the first and second supports are to be claimed in combination with the shelf base. These features are first claimed in "for"/intended use statements and then are later positively claimed ("in said extension and retraction directions of the first support and the second support"). For examination purposes, the supports are not being considered as positively claimed (per instructions found in the appeal brief filed 9/16/2009, page 9, paragraph 4).

Claims 15,18, 22, 24, 25, 27 and 29-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Whalen (2,103,885). Whalen teaches a shelf base (Fig. 3) comprising: a plate (26), lower open ended retaining rails (29-32) extending along a lower side of the plate and upper retaining rails (17-21) extending along the upper side of the plate (for claim 30). The rails are attached together by the plate via a member (43), the lower rails being displaceably connected (see dashed lines in Fig. 2) via members (39-42) and are retained on the plate via members (53,55). The rails accommodate shells/holders/supports (74,83). Also the plate has no apertures adjacent the rails.

Claims 30, 32, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Verchere (5,036,990). Verchere teaches a shelf base (Fig. 1) comprising: a solid plate (40), lower open ended retaining rails (28,35) extending along a lower side of the plate between its front and rear edges and upper retaining rails (27,34) extending along the upper side of the plate between its front and rear edges. The rails are attached together along/across the front/rear edge (edges being relative) of the plate via members/guide profiles (29 and corresponding member between 34,35 that spans the width of the edge) and are not attached together at the opposite edge.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whalen in view of Avery (2,018,002). As stated above, Whalen teaches the limitations of claim 15, including a shelf base having rails that accommodate shells/holders/supports (74, 83). For claim 26, Whalen fails to teach that the support includes a base plate with ribs having indentations. Avery teaches a support (32) that includes a base plate with ribs

having indentations (See Fig. 3). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the base of Whalen by using an alternate support therein, i.e using the support of Avery instead of the support presently used, depending on the type of items to be stored in the base. The support of Avery accommodating bottles in a secure manner.

Claims 15, 18, 19, 22-25, 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hearst (2,450,337) in view of Frank (5,348,207). Hearst teaches a shelf base (Fig. 2) comprising: a plate (11) and tiltable upper and lower drawer units attached together and to the plate via a guide profile/clip (15) and housing walls. For claim 15, Hearst fails to teach upper and lower rails. Frank teaches a tiltable drawer (17) using rear open ended rails (19, 21). The front of the rails includes a flange/stop (see Fig. 1b). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the base of Hearst by adding rails between the drawers and housing walls, such as is taught by Frank, to provide a means between the housing and drawers that would allow tilting of the drawers while not allowing easy removal of the drawers from the housing. The rails of the upper drawer being upper rails and the rails of the lower drawer being lower rails; these rails being removed/displacable on the drawers. The drawers constituting shells/holders/supports capable of holding various items including cans, eggs, etc.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Verchere in view of Hearst (2,450,337). As stated above, Verchere teaches the limitations of claim 30, including a solid plate (40). For claim 33, Verchere fails to

specifically teach a glass plate. Hearst teaches a glass plate (11) used as a shelf. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the plate of Verchere by using specifically a glass plate therein, such as is taught by Hearst, for aesthetic reasons, so that items below the plate can be viewed, etc.

(10) Response to Argument

Addressing the arguments concerning the 112, second paragraph rejections: as stated in the advisory action of 4/23/2009, the rejection concerning the rail securement is being considered moot. The arguments submitted with in the second appeal brief filed 9/16/2009 and in the advisory action being persuasive (even though the amendment of the advisory action itself, because of other issues, was not entered). As for the rejection concerning the supports, as stated in the brief filed 9/16/2009, the support members are not being considered as being positively claimed. However, for 112 second paragraph purposes, the claim language in claim 30 should be made clearer to avoid this confusion.

Addressing the arguments concerning Whalen'885: first, the examiner contends that Whalen meets the limitations of claims 15 and 30. It should be noted that the plate is considered member 26 and the rails are the rails members 17-21 and 29-32. The plate does indeed have a front edge, a rear edge a lower side and an upper side (see plate 26 in Fig. 3). Second for claim 30, the front portion/extents of the lower and upper rails of Whalen do extend along lower and upper sides of the plate, the front ends of the

rails are secured to each other via the plate and a member (43), and the extents of the rails are not directly secured to one another between the front and rear edges of the plate as shown in Fig. 3. The rails and plates do not have to be the same length/depth as implied by the arguments, they only have to have a portion extend there along. Furthermore, the terms front and rear are relative, therefore the end portions of rails 17-21 and 29-32 adjacent the plate 26 can be consider the rear ends (for claim 29) and the front ends, the ends remote from the plate and not attached thereto (for claim 30). Third, as stated above, limitations found in intended use/"for" statements have been given no weight in the claims. Therefore, the supports are not being positively claimed. Furthermore, see page 9, paragraph 4 of the brief filed 9/16/2009 wherein the applicant concurs with this claim limitation interpretation. Fourth, the importance of the use of the base, e.g. for providing a support, is noted; however, these advantages are not positively claimed and do not define structure features of the disclosed invention which would overcome the art rejections. Note: even if for example the support function of the shelf base of the disclosed invention was claimed, the shelf base of Whalen also provides upper and lower article support. Finally, as for the dependent claims, it is argued that Whalen (with Avery for claim 26) teaches all of the limitations found in the above stated claims (see art rejections).

Addressing the arguments concerning Verchere: first, it should be noted that this reference is not being applied to claim 15 and its dependent claims. Second, the examiner contends that Verchere teaches all of the limitations of claim 30, 32, 34 and 35 as they stand. As stated above, limitations found in intended use/"for" statements

are given not weight in the claims. Furthermore, as also stated above, the supports are not being considered as being positively claimed. Therefore, that the upper rails are not "for attachment of the second support that holds chilled goods such that the second support can be extending relative to the upper retaining rails form an inward location into and outward location..." is irrelevant. The Verchere reference teaches all of the positively claimed limitations, including upper and lower rails having their front ends attached across the front edge of the plate. Finally, as for the dependent claims, it is argued that Verchere (with Hearst for claim 33) teaches all of the limitations found in the above stated claims (see art rejections).

Addressing the arguments concerning Hearst in view of Frank: because of the broad nature of claims 15, 18, 19, 22-25, 27 and 29, the references of Hearst and Frank, in combination, were applied. The examiner argues that the combination of these references meet all of the claimed limitations, including a plate (11 of Hearst) having upper and lower rails (19,21 of Frank) extending there along. The rails of Frank are analogous art because adding drawer rails between the drawers and housing walls of Hearst to provide a means between the housing and drawers that would allow tilting of the drawers while not allowing easy removal of the drawers from the housing would have been an obvious consideration to one having ordinary skill in the art.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 3637

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Janet M. Wilkens/

Primary Examiner, Art Unit 3637

Conferees:

Lanna Mai /LM/

Heather Shackelford /hcs/